

1 ETHAN P. DAVIS

2 Acting Assistant Attorney General

3 MARCIA BERMAN

4 Assistant Director, Federal Programs Branch

5 KATHRYN L. WYER (Utah Bar No. 9846)

6 M. ANDREW ZEE (California Bar No. 272510)

7 U.S. Department of Justice, Civil Division

8 1100 L Street, N.W., Room 12014

9 Tel. (202) 616-8475

10 kathryn.wyer@usdoj.gov

11 *Attorneys for Defendants*

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

15 ELOY ORTIZ OAKLEY, *et al.*,

16 Plaintiffs,

17 v.

18 BETSY DEVOS, *et al.*,

19 Defendants.

Case No. 4:20-cv-3215-YGR

**STIPULATION TO EXTEND
DEADLINE TO RESPOND TO
COMPLAINT AND SUBMIT
STIPULATED CASE MANAGEMENT
SCHEDULE; [PROPOSED] ORDER**

1 The Parties submit this stipulation and proposed order in advance of the deadline for
 2 Defendants' responsive pleading in order to (1) extend the deadline for Defendants' responsive
 3 pleading; (2) inform the Court of the Parties' intentions to negotiate a case management schedule
 4 that may obviate the need for a case management conference; and (3) seek exemption from
 5 alternative dispute resolution ("ADR") requirements. The Parties' stipulation and proposed
 6 order is based on the following:
 7

8 1. On May 11, 2020, Plaintiffs filed a Complaint for Declaratory, Injunctive, and
 9 Mandamus Relief in this Court based on Defendants' alleged imposition of student eligibility
 10 requirements for Higher Education Emergency Relief Fund disbursements under the CARES
 11 Act and based on agency actions taken on or around April 21, 2020. ECF No. 1.
 12

13 2. On May 13, 2020, Plaintiffs filed a Motion for Preliminary Injunction ("PI
 14 Motion"). ECF No. 16.

15 3. On May 13, 2020, the Court entered an Order Setting Initial Case Management
 16 Conference and ADR Deadlines. ECF No. 8. Pursuant to that Order, an Initial Case
 17 Management Conference ("CMC") has been scheduled for August 10, 2020, with related ADR
 18 Deadlines set for July 20, 2020 and a Rule 26(f) report and Case Management Statement due on
 19 August 3, 2020.
 20

21 4. On May 15, 2020, Plaintiffs effectuated service of process on the U.S. Attorney
 22 for the Northern District of California. ECF No. 33. Accordingly, Defendants' current deadline
 23 to respond to the Complaint is July 14, 2020. *See* Fed. R. Civ. P. 12(a)(2).
 24

25 5. On June 11, 2020, Defendants notified the Court of the forthcoming publication
 26 of an Interim Final Rule ("IFR") addressing the student eligibility requirements challenged in
 27 Plaintiffs' complaint and PI Motion. ECF No. 39. The Department of Education officially
 28

1 published this IFR on June 16, 2020, setting the deadline for public comments on the IFR as
2 July 17, 2020. IFR, 85 Fed. Reg. 36494 (June 17, 2020).

3 6. On June 17, 2020, the Court entered an Order Granting Plaintiffs' Motion for
4 Preliminary Injunction. ECF No. 44.

5 7. Plaintiffs anticipate that they may seek to amend their complaint in this case, but
6 Plaintiffs will be unable to make this determination until after they are able to review the
7 administrative record that Defendants plan to produce.

8 8. The parties agree that, in the interest of judicial economy and litigation efficiency,
9 the date of the filing of Defendants' responsive pleading should be postponed until after
10 Plaintiffs determine whether they will amend their complaint.

11 9. The parties have begun conferring regarding further proceedings in this case and
12 anticipate reaching agreement on a schedule under which Defendants will file an administrative
13 record, Plaintiffs may file an amended complaint, and the parties will set forth a schedule by
14 which the case may be resolved on cross motions for summary judgment.

15 10. The Parties have conferred regarding the suitability of this case for the Court's
16 ADR Multi-Option Program, and have agreed that the case is unlikely to be resolved on a
17 voluntary basis, and that that no ADR process is therefore likely to deliver benefits to the Parties
18 sufficient to justify the resources devoted to that process.

19 **THEREFORE, THE PARTIES STIPULATE AS FOLLOWS:**

20 1. Pursuant to Civil Local Rule 6-1(a), Defendants' deadline to answer or otherwise
21 respond to the complaint is postponed.

22 2. The Parties will meet and confer and endeavor to reach agreement regarding the
23 production of the administrative record and timelines for Plaintiffs' amendment of the complaint
24

(if any), Defendants' answer or other response to the complaint, and cross motions for summary judgment.

3. The Parties will file either a stipulated proposed case management order or a joint CMC statement on August 3, 2020, setting forth a proposed case management schedule or their respective positions regarding case management, including whether there is a need to keep the August 10, 2020 CMC on the calendar.

4. The Parties respectfully request that this case be exempted from the ADR Multi-Option Program consistent with Local Rule 16-8(d)(3).

DATED: July 13, 2020

Respectfully submitted,

ETHAN P. DAVIS

Acting Assistant Attorney General

MARCIA BERMAN

Assistant Director, Federal Programs Branch

/s/ Kathryn L. Wyer

KATHRYN L. WYER (Utah Bar No. 9846)

M. ANDREW ZEE (California Bar No. 272510)

U.S. Department of Justice, Civil Division

1100 L Street, N.W., Room 12014

Tel. (202) 616-8475

kathryn.wyer@usdoj.gov

Attorneys for Defendants

XAVIER BECERRA

Attorney General of California

CHERYL FEINER

MICHAEL NEWMAN

Senior Assistant Attorneys General

CHRISTINE CHUANG

Supervising Deputy Attorney General

JULIA HARUMI MASS

JASLEEN SINGH

SHUBHRA SHIVPURI

JOSHUA SONDHEIMER

/s/ Lee I. Sherman

LEE I. SHERMAN
Deputy Attorneys General
*Attorneys for Plaintiffs Eloy Ortiz Oakley
and Board of Governors of the California
Community Colleges*

ATTESTATION

Pursuant to Local Rule 5-1(i)(3), I attest that I am the ECF user whose user ID and password are being used in the electronic filing of this document, and further attest that I have obtained the concurrence in the filing of the document from the other signatory.

[PROPOSED] ORDER

Upon stipulation of the Parties, and good cause appearing, IT IS ORDERED that:

1. The Parties shall meet and confer regarding deadlines for production of the administrative record, Plaintiffs' amendment of their complaint (if any), Defendants' answer or other response to the complaint, and cross motions for summary judgment.
2. On August 3, 2020, the Parties shall file either a stipulated proposed case management order or a joint CMC statement.
3. The Parties' request to be exempted from the ADR Multi-Option Program consistent with Local Rule 16-8(d)(3) is GRANTED.

Dated: _____, 2020

YVONNE GONZALEZ ROGERS
United States District Court Judge